

MARK J. BENNETT 2672  
Attorney General of Hawaii

2006 AUG 17 PM 2:05

ROBYN M. KUWABE 3001  
Deputy Attorney General  
Department of Attorney  
General, State of Hawaii  
Labor Division  
425 Queen Street  
Honolulu, Hawaii 96813  
Telephone: 586-1450

HAWAII LABOR  
RELATIONS BOARD

Attorneys for Director, Department  
of Labor and Industrial Relations

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NOS. OSH 2006-5
	)	(Inspection No. 309456085)
DIRECTOR, DEPARTMENT OF LABOR	)	
AND INDUSTRIAL RELATIONS,	)	STIPULATION AND SETTLEMENT
	)	AGREEMENT; EXHIBIT "A"; APPROVAL
Complainant,	)	AND ORDER
	)	
vs.	)	
	)	
FIVE STAR ROOFING LLC,	)	
	)	
Respondent.	)	

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director, Department of Labor and Industrial Relations ("Director")  
and Respondent FIVE STAR ROOFING LLC ("Respondent"), having reached a full and  
complete settlement of the above-captioned contested cases presently pending before the Hawaii  
Labor Relations Board ("Board") stipulate and agree as follows:

On or about February 9, 2006, the Director, by and through the State of Hawaii's  
Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located

at 4459 Kolohala Street, Honolulu, Hawaii 96816.

As a consequence of said inspection, the Director issued a Citation and Notification of Penalty on February 24, 2006 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$5,500.00. *See* Exhibit "A".

Respondent timely contested its Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned cases, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").
2. At all relevant times, Respondent maintained a workplace at 4459 Kolohala Street, Honolulu, Hawaii 96816.
3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.
4. Respondent agrees that it has abated each violation listed in the Citation in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22.
5. Citation 1, Item 1, 29 CFR § 1926.300(b)(2) [Refer to chapter 12-127.1, HAR], is affirmed as to the violation and corresponding characterization as stated in the Citation.
6. The Director reduces the penalty for Citation 1, Item 1 from \$500.00 to \$250.00 which shall be paid in full to the Director of Budget and Finance upon the execution of this Agreement.

7. Respondent shall apply for and make a good faith effort to participate in the Department of Labor and Industrial Relations' "SHARP" program within thirty (30) days after the filing of this Agreement and shall be certified as a SHARP company on or before ninety (90) days after the filing of this Agreement. Provided that if a written request for an extension of the deadline is submitted to the Director prior to the expiration of the ninety (90) day deadline, the Director may extend the ninety (90) day deadline if the inability to meet the deadline is attributable to HIOSH and not Respondent, and Respondent has demonstrated that it has made a good faith effort to be certified by the deadline. The Director's decision on whether to extend the deadline shall be final and unappealable.

8. In return for and upon Respondent's certification as a SHARP company within the deadlines as described in paragraph 7 above, Respondent's Citation 1, item 2, 29 CFR § 1926.501(b)(13) [Refer to chapter 12-121.2, HAR] shall automatically be deleted.

9. If, however, Respondent fails to fulfill any of its agreements as described and required in paragraph 7 above, Respondent's Citation 1, item 2, 29 § CFR 1926.501(b)(13) [Refer to chapter 12-121.2, HAR] shall fully and automatically be final and conclusive and shall be treated as such with regard to this Citation and any future citations the Director may issue against Respondent including, but not limited to, any "repeat" violations.

10. This Agreement shall become a final order of the Director.

11. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

12. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

13. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

DATED: Honolulu, Hawaii, August 15, 2006

FIVE STAR ROOFING LLC

By: [Signature]  
Its President

APPROVED AS TO FORM:

DIRECTOR, DEPARTMENT OF LABOR  
AND INDUSTRIAL RELATIONS, STATE OF  
HAWAII

[Signature]  
ROBYN M. KUWABE  
Deputy Attorney General

[Signature]  
NELSON B. BEFITEL

Attorney for Director  
Department of Labor and  
Industrial Relations, State of Hawaii

APPROVED AND SO ORDERED BY  
HAWAII LABOR RELATIONS BOARD:

DATED: August 17, 2006  
ORDER NO. 200

[Signature]  
BRIAN K. NAKAMURA, Chair

[Signature]  
SARAH R. HIRAKAMI, Member

Excused

[Signature]  
EMORY J. SPRINGER, Member

*Director, Department of Labor and Industrial Relations v. DTB Construction Consultants, Inc., Case No. OSH 2006-5, Inspection No. 309456085 - Stipulation and Settlement Agreement*

13. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

DATED: Honolulu, Hawaii, August 15, 2006.

FIVE STAR ROOFING LLC

By: [Signature]  
Its President

APPROVED AS TO FORM:

DIRECTOR, DEPARTMENT OF LABOR  
AND INDUSTRIAL RELATIONS, STATE OF  
HAWAII

[Signature]  
ROBYN M. KUWABE  
Deputy Attorney General

[Signature]  
NELSON B. BEFITEL

Attorney for Director  
Department of Labor and  
Industrial Relations, State of Hawaii

APPROVED AND SO ORDERED BY  
HAWAII LABOR RELATIONS BOARD:

DATED: August 17, 2006  
ORDER NO. 200

[Signature]  
BRIAN K. NAKAMURA, Chair

[Signature]  
SARAH R. HIRAKAMI, Member

Excused

[Signature]  
EMORY J. SPRINGER, Member

*Director, Department of Labor and Industrial Relations v. DTB Construction Consultants, Inc., Case No. OSH 2006-5, Inspection No. 309456085 - Stipulation and Settlement Agreement*

State of Hawaii  
Department of Labor and Industrial Relations  
Hawaii Occupational Safety and Health Division  
830 PUNCHBOWL STREET, ROOM 425  
Honolulu, HI 96813  
Phone: (808) 586-9110 FAX: (808) 586-9104



Certified Number: 7004 1350 0000 8139 1794

## Citation and Notification of Penalty

**To:**

Five Star Roofing LLC  
and its successors  
5 Sand Island Access Rd Bldg 928  
Honolulu, HI 96819

**Inspection Site:**

4459 Kolohala St  
Honolulu, HI 96816

**Inspection Number:** 309456085 (Conroy Dang)

**Inspection Date(s):** 02/09/2006 - 02/09/2006

**Issuance Date:** 02/24/2006

**OSHA ID:** R1844

**Optional Report No.:** 029-06

**Inspection Type:** Referral

**Scope of Inspection:** Partial Inspection

*The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.*

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

**Posting** - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

**Informal Conference** - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 4, Notice to Employees next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

**Employers' Right to Contest** - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

**Penalty Payment** - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

**Notification of Corrective Action** - For each violation which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful and Repeat** violations, documents (example: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-55-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

**Employer Discrimination Unlawful** - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

**Employer Rights and Responsibilities** - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

**Employees' Right to Contest** - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

**Inspection Activity Data** - you should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at [WWW.OSHA.GOV](http://WWW.OSHA.GOV). If you have any dispute with the accuracy of the information displayed, please contact this office.





## NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 02/24/2006. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, Honolulu, HI 96813 on \_\_\_\_\_ at \_\_\_\_\_. Employees and/or representatives of employees have a right to attend an informal conference.

# STATE OF HAWAII

Department of Labor and Industrial Relations  
Hawaii Occupational Safety and Health Division

Inspection Number: 309456085  
Inspection Dates: 02/09/2006 - 02/09/2006



830 Punchbowl Street, Room 425  
Honolulu, HI 96813

Issuance Date: 02/24/2006

## Citation and Notification of Penalty

Company Name: Five Star Roofing LLC  
Inspection Site: 4459 Kolohala St, Honolulu, HI 96816

Citation 1 Item 1 Type of Violation: **Serious**

29 CFR 1926.300(b)(2) [Refer to chapter 12-127.1, HAR] was violated because:

A Titan Industrial air compressor, serial number 46232, was missing a side guard over its belt and wheel assembly. The unguarded moving parts exposed the employees to a caught in hazard. A caught in hazard exposes the employees to potential serious injuries.

29 CFR 1926.300(b)(2) states "Belts, gears, shafts, pulleys, sprockets, spindles, drums, fly wheels, chains, or other reciprocating, rotating or moving parts of equipment shall be guarded if such parts are exposed to contact by employees or otherwise create a hazard. Guarding shall meet the requirements as set forth in American National Standards Institute, B15.1-1953 (R1958), Safety Code for Mechanical Power-Transmission Apparatus."

Location: Project site at 4459 Kolohala Street

Date By Which Violation Must be Abated:  
Penalty:

02/28/2006  
\$500.00

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

# STATE OF HAWAII

Department of Labor and Industrial Relations  
Hawaii Occupational Safety and Health Division

830 Punchbowl Street, Room 425  
Honolulu, HI 96813

Inspection Number: 309456085  
Inspection Dates: 02/09/2006 - 02/09/2006



Issuance Date: 02/24/2006

## Citation and Notification of Penalty

Company Name: Five Star Roofing LLC  
Inspection Site: 4459 Kolohala St, Honolulu, HI 96816

Citation 1 Item 2 Type of Violation: **Repeat**

29 CFR 1926.501(b)(13) [Refer to chapter 12-121.2, HAR] was violated because:

Two roofing foremen and three roofers were observed working on a residential roof that was 10 feet 10 inches above the ground. There were no type of fall protection systems in place thus the employees were exposed to a fall hazard. A fall to a lower level exposes the employees to potential serious injuries or death.

29 CFR 1926.501(b)(13) states "Residential construction. Each employee engaged in residential construction activities 6 feet (1.8 m) or more above lower levels shall be protected by guardrail systems, safety net system, or personal fall arrest system unless another provision in paragraph (b) of this section provides for an alternative fall protection measure."

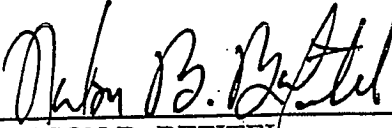
Five Star Roofing LLC was previously cited for a repeat violation of this occupational safety and health standard (29 CFR 1926.501(b)(13)), which was contained in HIOSH inspection number 307258913, citation number 1, item number 1, issued on October 22, 2004, for job site at 430 Kealahou Street, Honolulu, Hawaii 96825 and became final order on December 6, 2004. Five Star Roofing LLC was also previously cited for a violation of this occupational safety and health standard (29 CFR 1926.501(b)(13)), which was contained in HIOSH inspection number 306263344, citation number 1, item number 1, issued on December 10, 2003, for job site at 92-1074 Olani Street, Kapolei, Hawaii 96707 and became final order on January 5, 2004.

Abatement Note: Abatement documentation, such as written, videographic or photographic evidence of abatement is required.

Location: Project site at 4459 Kolohala Street

Date By Which Violation Must be Abated:  
Penalty:

02/28/2006  
\$5,000.00

  
NELSON B. BEFITEL  
DIRECTOR

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii  
Department of Labor and Industrial Relations  
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION  
830 PUNCHBOWL STREET, ROOM 425  
Honolulu, HI 96813

## SUMMARY OF PENALTIES

Company Name: Five Star Roofing LLC  
Inspection Site: 4459 Kolohala St  
Honolulu, HI 96816  
Issuance Date: 02/24/2006

Summary of Penalties for Inspection Number 309456085

Citation 01, Serious = \$5,500.00

**TOTAL PENALTIES = \$5,500.00**

Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.

3/20/06

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
(Domestic Mail Only, No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Safety	Postage	\$ .87	309456085
	Certified Fee	2.40	
	Return Receipt Fee (Endorsement Required)	1.85	
	Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees		\$ 5.12	

Sent To  
Five Star Roofing LLC  
Street, Apt. No., or PO Box No. 5 Sand Island Access Road  
City, State, ZIP+4 Bldg. 928  
Honolulu, Hawaii 96819

PS Form 3800, June 2002 See Reverse for Instructions

COMPLETE THIS SECTION ON DELIVERY

☒ Agent  
☐ Addressee

Printed Name: [Signature] C. Date of Delivery: 2-27-06

Address different from item 1? ☐ Yes  
delivery address below: ☐ No

Mail ☐ Express Mail  
Return Receipt for Merchandise ☐  
C.O.D. ☐

Delivery? (Extra Fee) ☐ Yes

1000 8139 1794

102595-02-M-1540

## ABATEMENT CERTIFICATION

State of Hawaii  
Department of Labor and Industrial Relations  
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION  
830 PUNCHBOWL STREET, ROOM 425  
HONOLULU, HI 96813

Five Star Roofing LLC  
5 Sand Island Access Rd Bldg 928  
Honolulu, HI 96819

The hazard referenced in Inspection Number 309456085 for the violation identified as Citation 01 and item 001 was corrected on \_\_\_\_\_.  
How corrected \_\_\_\_\_.

The hazard referenced in Inspection Number 309456085 for the violation identified as Citation 01 and item 002 was corrected on \_\_\_\_\_.  
How corrected \_\_\_\_\_.

I attest that the Information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement activities described in this certification.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Type or Printed Name